

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

77-1358

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 77-1358, 77-1380, 77-1381

UNITED STATES OF AMERICA,

Appellee,

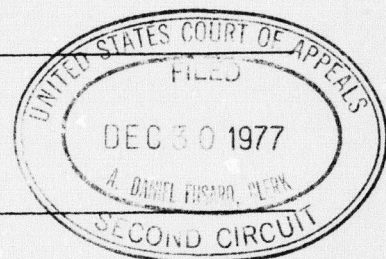
v.

ISIAH CRUTCH, EUGENE CRUTCH, and LOUIS BAS,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANT-APPELLANT
ISIAH CRUTCH



DAVID BLACKSTONE
401 Broadway
New York, New York 10013
Tel. 226-6684

Attorney for Defendant-Appellant
Isiah Crutch

COPY RECEIVED

ROBERT B. RISKE JR.

DEC 30 1977

U. S. ATTORNEY
SO. DIST. OF N. Y.

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BRIEF FOR DEFENDANT-APPELLANT
ISIAH CRUTCH

Defendant-appellant Isiah Crutch appeals from a judgment entered on September 7, 1977, by the United States District Court for the Southern District of New York, after a trial before the Honorable Robert L. Carter, U.S.D.J., and a jury, adjudging defendant-appellant Isiah Crutch guilty of conspiracy in violation of 18 U.S.C. § 371 (count 1) and twenty-six substantive counts - wire fraud, 18 U.S.C. §§ 1343 and 2 (counts 2, 3, 7, 10, 12, 20, 21, 25); interstate transportation of property of a

value in excess of \$5,000 stolen and taken by fraud, 18 U.S.C. §§ 2314 and 2 (counts 5, 6, 24); interstate transportation of a motor vehicle, stolen and taken by fraud, 18 U.S.C. §§ 2312 and 2 (counts 9, 14, 16, 27); and interstate transportation of a forged and counterfeit security, 18 U.S.C. §§ 2314 and 2 (counts 4, 8, 11, 13, 15, 17, 18, 19, 22, 23, 26). The codefendant-appellant Eugene Crutch was adjudged guilty of counts 1 and 29. The codefendant Eli Niccolo, named in counts 1 and 28, was acquitted. Leonard Caro and Hee Soo Kim, two other codefendants, pleaded guilty to various counts. Isiah Crutch was sentenced to an aggregate prison term of ten years.*

STATEMENT OF THE CASE

THE DISTRICT JUDGE'S DENIAL OF ISIAH CRUTCH'S CHOICE OF COUNSEL

On April 14, 1977, all of the codefendants personally appeared for arraignment in Part 1 before the Honorable Morris E. Lasker and entered not guilty pleas. Isiah Crutch, then serving a federal sentence on another case was apparently not ordered produced by the government and Judge Lasker directed the entry of a not guilty plea as to him. The case was assigned to Judge Carter. On April 19, 1977, the government filed a

*Five years on count 1. One year on counts 2, 3, 7, 9, 10, 12, 14, 16, 20, 21, 25, and 27 to run concurrently with each other and to run concurrently with count 1. Five years on each of counts 4, 5, 6, 8, 11, 13, 15, 17, 18, 19, 22, 23, 24, and 26 to run consecutively with the sentence imposed on count 1 and to run concurrently with each other.

superseding indictment. On April 21, 1977, a pre trial conference was held before Judge Carter and the case was set down for trial on June 20, 1977. Isiah Crutch was not produced for this conference either. Nor was there an attorney appearing for him there. Within a week Leonard J. Levenson was appointed under the Criminal Justice Act as counsel for Isiah Crutch and directed to be ready for trial on June 20, 1977.

On the appointed trial date, the court convened promptly at 10 a.m. Mr. Levenson immediately advised Judge Carter that Isiah Crutch had privately retained Mr. Rivers who was expected momentarily. [Tr. 2] Mr. Levenson understood that Mr. Rivers would seek an adjournment and so advised the court. When Judge Carter said that he would not delay the trial over a substitution, Mr. Levenson stated that he needed an adjournment anyway because he had been on trial since May 17 and was not ready to proceed. [Tr. 3] At 10:20 a.m. Mr. Rivers entered the courtroom, and Judge Carter, without affording him an opportunity to explain his tardiness, said:

Mr. Rivers is in contempt.

[Tr. 15]

Mr. Rivers explained that his lateness was due to traffic congestion but he was cut off by the court:

I'm sorry. There's always a reason,
Mr. Rivers and just let me say that I
will not tolerate it. If you are going
to represent this man you will be here
on time.

[Tr. 16]

Then Judge Carter, without hearing the respective
positions of counsel, or for that matter articulating any
pressing court need, stated:

There will be no delay on this trial,
Mr. Rivers. There will be no delay in
the trial. The trial will proceed.

[Tr. 16]

Mr. Rivers was given the option of going to trial
instantly or withdrawing [Tr. 17]:

MR. RIVERS: When you say the trial will
go forward, you make reference
to this morning at this time,
this moment?

THE COURT: Yes, we are going to proceed to
select a jury in a few moments.

MR. RIVERS: Then, under those circumstances
I don't see how it is possible
for me to represent him.

Mr. Levenson suggested that the trial begin with
Levenson as counsel and with Rivers substituting once he
had time to prepare. [Tr. 18]

Mr. Rivers stated the following and then left the
courtroom.

I just want to place on the record on behalf of
my would-be client, an exception to the court's
ruling, because it seems incredible to me that
under the Sixth Amendment, this defendant doesn't
have the opportunity to choose his own attorney.

[Tr. 18]

THE TRIAL

The government proved a resourceful and clever scheme by which the conspirators acquired valuable merchandise with counterfeit certified checks drawn on fictitious accounts and counterfeit bank teller's checks. The booty included \$25,590 in gold coins, a 1973 Mercedes Benz, a Hasselblad camera, a 1974 Mercedes Benz, a 450 SL Mercedes, two hundred fifty Poloroid SX170 cameras, a 1975 Rolls Royce, a 1975 Cadillac, and a 1975 Lincoln Mark IV. The government contended that Isiah Crutch masterminded the operation and that he shielded himself from justice and escaped detection by having subordinates carry out the field work. One by one the underlings, principally Susan Abbott, Jerold Heitzner, and Leonard Caro were caught in the act. Eventually they began cooperating with the government and testified. The government also marshalled fingerprint evidence against Isiah Crutch, connecting him to an inventory of counterfeit checks that lay in Susan Abbott's safety deposit box. Also, the printer, codefendant-appellant Louis Bas, testified in his own defense to the effect that Isiah Crutch duped him into printing the checks illicitly used. Bas maintained that Isiah Crutch palmed himself off as a busy printing broker. There was, in addition, taped conversation between Isiah Crutch and Michael Zelberberg, linking Crutch to

to a scheme to sell \$1,750,000 in counterfeit Bankers Trust Co. cashier's checks to an undercover FBI agent. Informant testimony and fingerprint evidence also tied Isiah Crutch into this particular scheme.

A brief narrative about the witting and unwitting accomplices to the fraud who implicated Isiah Crutch at trial follows.

Susan Abbott became acquainted with Isiah Crutch in December, 1974 and moved in with him in January, 1975. [Tr. 99, 102] She claimed that dire economic circumstances made it necessary for her to run errands for Isiah Crutch. [Tr. 102] There were many errands; such things as using a fictitious name to open up a bank account, posing as a buyer for fictitious companies and ordering valuable merchandise - gold coins, cameras - to be paid for with counterfeit certified checks, and purchasing a number of cars making payment with counterfeit certified checks. When Isiah Crutch was about to begin a federal jail sentence in October, 1975, he entrusted to Abbott some of the tools of trade - check certification stamps, a paymaster machine and blank checks - and instructed her to carry on. By February, 1975 Susan Abbott was beset by many federal and state prosecutions and sought Isiah Crutch's help in raising legal fees. She talked with him at the federal

jail and he, for the first time, disclosed the printer's identity - Louis Bas - and sent her to him for financial help. [Tr. 243, 244] Eventually Suan Abbott began cooperating with the government hoping to receive favorable dispositions on her outstanding charges and a reduction in a federal sentence imposed by Judge Inzer B. Wyatt.

Jerold Heitzner was unemployed in January of 1975 when he met Isiah Crutch and agreed to go to work for him. [Tr. 746] Heitzner had a prior criminal record that included a conviction for possession of marijuana and possession of a gun. [Tr. 745] He used fictitious identities to rent office space for Isiah Crutch, served as a pick-up man for merchandise obtained with counterfeit checks and made some purchases with counterfeit checks. As a result of his cooperation a federal sentence for wire fraud was reduced from three years to 13 months. [Tr. 746] On a separate Southern District wire fraud prosecution he received a concurrent sentence with the reduced sentence on the first federal charge. [Tr. 746]

Leonard Caro met Isiah Crutch in the summer of 1975 at the Caprice Disco Casino in the Bronx where Caro worked as maitre d'. Crutch arrived in a black limousine, dined Caro and gave him a \$200 or \$300 advance after Caro agreed to work for him. At the instigation of Isiah Crutch,

Caro purchased a Mercedes with a counterfeit check. He then gave the car to Isiah Crutch. Caro pleaded guilty to interstate transportation of the stolen car. His sentence pended his giving government testimony. [Tr. 481]

Steven Rowe was a government informant. He testified of the time Isiah Crutch made a swap with Michael Zelberberg of Crutch's counterfeit teller's checks for Zelberberg's stolen securities. [Tr. 645] The counterfeit teller's checks ultimately fell into the hands of the FBI.

Anna George maintained a romantic relationship with Isiah Crutch until Susan Abbott intruded in January, 1975. [Tr. 585] She received Youth Correction Act treatment and confinement upon a guilty plea to a crime in the Southern District of New York and began to cooperate with the government while serving her sentence. Her cooperation did not result in any benefit to her. A Rule 35 motion to reduce sentence did not succeed. [Tr. 565] Anna George testified that Isiah Crutch stored in her apartment his check certification stamps, his check writing machine and some printing negatives for checks. [Tr. 569] She once was introduced to the printer and identified him as defendant-appellant Louis Bas. In 1976 Anna George and Isiah Crutch were lodged in the same federal jail. Susan Abbott would regularly visit Crutch. Isiah Crutch told

George that his business was being carried on by Abbott while he was in jail. [Tr. 576]

The codefendant-appellant Louis Bas operated a printing shop in Brooklyn, New York. He testified in his own defense and implicated Isiah Crutch. In substance Bas testified that in September, 1974 Crutch entered his shop and ordered some checks and stationery. [Tr. 1251-1252] Isiah Crutch regularly ordered checks thereafter. Bas thought that Crutch - who called himself Robert McPherson - was a printing broker because he placed so many different orders for different companies. Bas admitted that he printed virtually all of the counterfeit checks introduced by the government at trial.

A SUMMARY OF THE EVIDENCE ON THE
SUBSTANTIVE COUNTS

Counts 2 through 6 deal with the illicit transactions that netted \$25,590 in gold coins from a San Antonio, Texas rare coin dealer. Susan Abbott testified that Isiah Crutch engineered the entire operation. First she posed as a buyer for a fictitious company and ordered the gold coins by telephone. Next she transmitted a counterfeit certified check in payment. [Tr. 103-106] The dealer delivered the coins in two shipments to Kennedy airport. Each time Jerold Heitzner accompanied Isiah Crutch and Susan Abbott to the airport. Heitzner picked up the merchandise. [Tr. 110-113, 749-750].

Counts 7 and 8 involve another gold coin order to a dealer in Minneapolis, Minnesota, only this time the plan did not succeed. Here Susan Abbott on instructions from Isiah Crutch placed a telephone order for \$65,000 in gold coins, using a fictitious company. [Tr. 115, 116] The dealer became suspicious and alerted the FBI. [Tr. 606] The conspirators arranged for Brinks to bring the merchandise to New York. On May 1, 1975, Isiah Crutch dispatched Jerold Heitzner to Brinks to sign the contract. Heitzner was arrested by the FBI at the Brinks office. [Tr. 760]

In May, 1975 a 1973 Mercedes Benz was fraudulently purchased and resold by the conspirators. These transactions form the basis of counts 9 and 10. Isiah Crutch directed Susan Abbott to Larchmont, New York to purchase the car from Leonard Yessen. Abbott took possession of the car and paid Mr. Yessen with a counterfeit certified check in the amount of \$12,500. [Tr. 128-131] A few days later Abbott took the car to New Jersey and sold it to an automobile dealer for \$10,500. Isiah Crutch and Jerold Heitzner accompanied Abbott to New Jersey. [Tr. 135]

A Morristown, New Jersey resident placed an ad in the newspaper for the sale of his Hasselblad camera. Jerold Heitzman's purchase of the camera with a counterfeit

certified check is the basis for the charges in counts 10 and 11. Isiah Crutch got the camera. Heitzner got \$250 from Crutch for his efforts. [Tr. 763-766]

On June 15, 1975, Isiah Crutch initiated Susan Abbott's telephone call to a Greenwich, Connecticut resident who advertised his 1974 Mercedes Benz for sale. Using the calling card of Katrina Walters, Susan Abbott made the purchase with a counterfeit certified check for \$13,500. [Tr. 137-138] The car was later sold to an automobile dealer in Englewood Cliffs, New Jersey. [Tr. 141] The illicit transactions described are charged in counts 12 through 14.

Leonard Caro gave the testimony that convicted Isiah Crutch on counts 15 and 16. Using fictitious credentials supplied by Isiah Crutch, Caro purchased a Mercedes Benz from a Fairfield, New Jersey resident, making payment with a counterfeit certified check. [Tr. 491] Caro brought the car to a garage in New York City and gave Isiah Crutch the garage ticket. [Tr. 498-501]

Count 17 involved a set of events that resolved when an undercover FBI agent came into possession of \$1,750,000 worth of counterfeit teller's checks. Steven Rowe, a government informant, witnessed a meeting between Isiah Crutch and Michael Zelberberg at which Crutch swapped a package of his counterfeit teller's checks for Zelberberg's

package of stolen securities. [Tr. 632-645] The scene then shifts to Washington, D. C. where Joseph Yablonsky, an undercover FBI agent, met with Eugene Brent and Eddie Fritz and learned that Steven Korsen had genuine but stolen securities for sale. Yablonsky then made arrangements with Steven Korsen to buy \$1,750,000 worth of stolen securities. When Korsen delivered the goods in Washington, D. C., he was arrested. [Tr. 688-693] The stolen securities turned out to be counterfeit and latent fingerprints of Isiah Crutch were removed from some of the checks confiscated. [Tr. 694] Later on Michael Zelberberg began cooperating with the government and consented to the recording of two telephone conversations between him and Isiah Crutch which tied Crutch into the Washington, D. C. deal. [Tr. 806, 812, 821]

Jerold Heitzner and the codefendant Hee Soo Kim traveled to Chicago, Illinois with counterfeit certified checks which they used to open up separate bank accounts at the Citizens National Bank. They received the checks from Isiah Crutch. [Tr. 771] These acts constitute the charges in counts 18 and 19.

The target of the frauds perpetrated under counts 20-24 was the Poloroid Camera Corp. of Paramus, New Jersey. Susan Abbott at the instigation of Isiah Crutch placed a telephone order for thirty thousand dollars worth of

Poloroid SX 170 cameras and made arrangements to have an independent trucker make payment with a counterfeit check and take delivery. [Tr. 182-188] Jerold Heitzner followed the trucker to Paramus and the merchandise was picked up and delivered to a rented space at 1160 Fifth Avenue, New York City. [Tr. 773] Inspired by success, a repeat performance was initiated by Isiah Crutch some days later. [Tr. 191] This time Heitzner was arrested. [Tr. 774]

A limousine driver became the unwitting accomplice to the fraud involved in counts 25-27. Susan Abbott overheard Hee Soo Kim, a codefendant, negotiate by telephone for the purchase of a 1975 Rolls Royce from a man in Canada. Kim told the Canadian that she would send her chauffeur to pick up the car. [Tr. 195-198] Arrangements were then made to have Patrick Rio, a chauffeur for a limousine company, pick up the car and pay for it with another counterfeit certified check. [Tr. 198-199] Patrick Rio picked up the car and delivered it to a garage in New York City. [Tr. 716-717] Isiah Crutch then picked up the car. [Tr. 204] For reasons that are not revealed in the trial, the participants returned the car to the seller. [Tr. 204]

ARGUMENT

THE DEFENDANT-APPELLANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO BE REPRESENTED AT TRIAL BY COUNSEL OF HIS OWN CHOOSING AND MUST ACCORDINGLY BE GRANTED A NEW TRIAL.

A defendant has a Sixth Amendment right to counsel of his choice. *Lee v. United States*, 235 F2d 219 (D.C. Cir. 1956); *United States v. Bergamo*, 154 F2d 31 (3rd Cir. 1946); *United States v. Bradford*, 238 F2d 395, 397 (2nd Cir. 1956), Cert denied, 352 U.S. 1002 (1956). See also, *Abraham v. United States*, 549 F2d 236 (2nd Cir. 1976). When Judge Carter refused to put the trial off for a few days so as to allow Mr. Rivers, the retained attorney, to substitute for Mr. Levenson, the C.J.A. attorney, and to prepare for trial, he violated the defendant-appellant's Sixth Amendment right to counsel.

Isiah Crutch's decision to discharge his C.J.A. attorney and to retain his own was fully justified by the pre trial events even though his decision came late. To begin with, it is obvious that the C.J.A. attorney had been neglecting the defendant-appellant because he answered unprepared - not ready - for trial.* A defendant does not

*After Mr. Rivers left the courtroom, his request for an adjournment having been denied, the defendant-appellant had this to say about his reason for retaining a lawyer:

DEFENDANT ISIAH CRUTCH: May I address the Court now?

Good morning. I would like to make a few statements and clarify a few things.

Number one, in reference to attorneys, Mr. Rivers and Mr. Levinson, I arrived here in New York on the 22nd of April and I was informed I was indicted, and I saw Mr. Levinson about a week later and he informed me that he was going on trial as of May, I believe, and he would try to get over and see me and try to discuss the case.

have to put himself at the mercy of an unprepared lawyer and must be allowed to take appropriate measures to extricate himself. Also, all of the important pre trial events took place in the defendant-appellant's absence

During that period of time he was on trial constantly. I saw him every two weeks once in a while for about 15 or 20 minutes. He didn't have the necessary time to put on the case. So I asked him, "What do you think about the case?", because I tried to plead guilty to the same charges about a year ago because I didn't think it was going to go this far, to go to trial, because I tried to plead guilty to the charges about a year ago.

As a result of that, Mr. Levinson was busy, so I called my family to try to retain counsel, which this happened about three or four weeks ago when I sought Mr. Rivers' assistance on this particular case.

As a result of that, the money wasn't gathered together until about Thursday, I believe, or Friday, when he actually got the retainer, which was not what he really wanted.

As far as myself, I don't have any money. The money was put up by my family as far as fees were concerned.

THE COURT: All right.

DEFENDANT ISIAH CRUTCH: One more statement I would like to make. With all due respect to the Court, your Honor, and the prevailing circumstance centering around this case, Mr. Levinson hasn't had enough time, nor myself, to even speak with him as to the details of the particular case, as to what type of defense or any defense whatsoever that we can explore on this particular trial.

I only saw Mr. Levinson about five times at the Metropolitan Correctional Center to discuss this case, and in the interests of justice and the fact of all fairness, your Honor, I would like to know if the Court deems fit to have a one or two day postponement in order that we can familiarize ourselves with the papers that we have, in order to familiarize ourselves with the defense that we are going to put up as to how we are going to handle this particular trial.

I don't know what is going on. Mr. Levinson doesn't know. We have to play everything by ear as to what is happening, and the government is fully prepared. [Tr. 32-34]

and this doubtlessly generated a fear in him that a fair trial would not be given. The government should have produced him for arraignment in Part 1, but did not, and a not guilty plea was directed in his absence. No arraignment was had on the superceding indictment although there should have been pursuant to Rule 10 of the Federal Rules of Criminal Procedure. The defendant-appellant was not produced either for the pre trial conference of April 21, 1977, at which the case was set down for trial on June 20, 1977. There was not even a lawyer representing him at this conference. Finally, he was appointed a C.J.A. lawyer without even being consulted by the court.

When Mr. Rivers entered the courtroom on the trial date, he was given shoddy treatment by Judge Carter who had already made up his mind to keep Mr. Rivers out of the case by forcing the trial to proceed instantly. The record is barren of any reason why the district judge could not have bent a little and given Mr. Rivers the adjournment he needed in order to ready himself for trial. The case was still well within the speedy trial time limit. No counsel for the codefendants was heard to oppose a delay. The government did not claim a prejudice and Judge Carter did not assert a need of his own.

A defendant's Sixth Amendment right to counsel should prevail against the possible inconvenience of some

slight delay. *Cleveland v. United States*, 322 F2d 401, 402 (D.C. Cir. 1963), Cert. denied, 375 U.S. 884 (1963) Since the record demonstrates that the defendant-appellant was not, in the guise of hiring another lawyer, seeking a stall of the trial, the district judge should have afforded the defendant-appellant his Sixth Amendment rights. *McConnell v. United States*, 375 F2d 905 (5th Cir. 1967)

Relief has been denied in this circuit to defendants with similar claims as is presented here but only because the defendants in question were found to have been engaging in tactics of delay. *United States v. Bentvena*, 319 F2d 916 (2nd Cir. 1963), Cert. denied *Ormento v. United States*, 375 U.S. 940 (1963) (The court found that the defendants were deliberately attempting to stall for time.) *United States v. Abbamonte*, 348 F2d 700 (2nd Cir. 1965), Cert. denied, 382, U.S. 982 (1966) (The defendant who had gone through two lawyers attempted to fire his third as soon as the court refused a continuance to allow the defendant to settle his affairs.); *United States v. Llanes*, 374 F2d 712 (2nd Cir. 1967), Cert denied, 388 U.S. 917 (1967) (The defendant attempted to fire his lawyer because the circuit court refused to stay a remand from its reversal of a district court suppression order pending an application for certiorari.); *United States ex rel. Baskerville v. Deegan*, 428 F2d 714 (2nd Cir. 1970), Cert. denied, 400 U.S.

928 (1970) (On the day of trial the defendant could not state a reason for his dissatisfaction with counsel); *United States ex rel Maniscalco v. LaVallee*, 417 F2d 1056 (2nd Cir. 1969), Cert. denied, 397 U.S. 1047 (1970) (Just prior to trial the defendant attempted to fire his lawyer purportedly because the lawyer advised him to plead guilty.)

The defendant-appellant was not seeking a stall and there is no evidence that he was. Faced with a soon-approaching trial on serious criminal charges and saddled with a C.J.A. attorney who was not prepared, the defendant-appellant wisely opted for a privately retained lawyer. The defendant-appellant did not come to court on the trial date and then ask for time to get another lawyer. Rather he made prior arrangements to have another lawyer appear and substitute. Certainly under the foregoing circumstances the defendant-appellant was entitled to at least a single articulated reason why the case could not be postponed so that the lawyer of his choice could prepare and defend him.

CONCLUSION

For the reasons given above, the judgment of conviction entered against the defendant-appellant Isiah Crutch by the United States District Court for the Southern District of New York on September 7, 1977, should be reversed, and the

case should be remanded for a new trial to the defendant-appellant Isiah Crutch.*

DATED: New York, New York
December 28, 1977.

Respectfully submitted,

David Blackstone
401 Broadway
New York, New York 10013
Tel. 226-6684

Attorney for Defendant-Appellant
Isiah Crutch

*I have declined the invitation of Isiah Crutch to raise certain issues in support of his appeal because, in my opinion, the proposed issues are frivolous. I have sent a letter to Mr. Crutch (Appendix for Defendant-Appellant Isiah Crutch, Exhibit G), advising him of the legal reasons why I omitted his proposed issues and also advising him of his rights under *Anders v. California*, 386 U.S. 738 (1967).